

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
February 20, 2007, at 9:00 a.m.
Scott Hart Auditorium
301 N. Roberts
Helena, Montana

PRESENT: Governor Brian Schweitzer, State Auditor John Morrison, Secretary of State Brad Johnson, Attorney General Mike McGrath and Superintendent of Public Instruction Linda McCulloch

Mr. McGrath moved for approval of the minutes from the January 16, 2007, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

BUSINESS CONSIDERED:

207-1 FWP: LEWIS & CLARK HERITAGE GREENWAY CONSERVATION EASEMENT
(South Shore Easement Application)

Ms. Sexton said this is a request from the Department of Fish, Wildlife and Parks and is a conservation easement donation from PPL for 170 acres across from the Interpretative Center in Great Falls.

Joe Maurier, FWP Administrator, said in 1999 Montana Power Company granted FWP an easement for about 2,400 acres on the north side of the Missouri River near Giant Springs State Park. Subsequent to that FWP started working with PPL and we entered into a Cooperative Management Agreement in 2002 with the idea that we would work on a conservation easement for this 170 acres on the south side over time. What you have here today is the culmination of that effort, we have finalized a conservation easement. Because we are already managing the property, I don't anticipate it will cost us any more operating money to continue to do what we've been doing. The idea of the conservation easement is basically to keep it in open space. The one provision PPL has in there is they do reserve the right to continue any facilities they may need in the future, although they don't contemplate any at this time. We did an EA, we have a final decision notice, and the FWP Commission approved this on February 13, 2007.

Motion was made by Mr. Johnson to approve the Heritage Gateway Conservation Easement. Seconded by Mr. McGrath. Motion carried unanimously.

207-2 FWP: ULM-PISHKIN STATE PARK CONSERVATION EASEMENT

Ms. Sexton said this is an agreement for an easement between DNRC and FWP. The DNRC acquired 897 acres known as the Eustace Ranch, which is adjacent to Ulm-Pishkin State Park. It does have significant cultural value. We are proposing an option agreement to sell and purchase a permanent easement on 480 acres of this 897 acre parcel. The term of the option is five years. FWP will pay DNRC \$11,704 annually which will be applied to the purchase price of \$334,400 upon execution of the option agreement. It is DNRC's recommendation and the recommendation of FWP to move forward with this option agreement.

MINUTES
February 20, 2007
Page 2

Mr. Maurier said we had a fairly lengthy discussion about this when the purchase was actually made from the Eustace family. We are still very excited about it. The only thing I'd say is during our EA process we had one comment from actual proponents who came to the board meeting when the purchase was approved the first time. Their only concern was because we are not purchasing the whole property we are actually, per the terms of the agreement, needing to put a fence line that crosses a drive line where the buffalo used to come up. They didn't want to see us actually put in a fence line that would disturb the surface. We will work with DNRC to figure it out, we just don't want to disturb the cultural resources. Our commission approved this February 13, 2007.

Motion was made by Ms. McCulloch to approve the agreement. Seconded by Mr. Morrison. Motion carried unanimously.

Mr. Johnson said my staff indicated there was a question raised as to whether or not these five \$11,704 payments can actually be applied to the purchase price. Has that question been resolved?

Ms. Sexton said yes, we contemplated before that point in time to make sure that had been resolved but we looked into it and it can be applied.

Tom Butler, DNRC Trust Land Attorney, said that question was looked at. What we've done is revised the agreement from an option agreement to a purchase agreement. Previously the question was whether you had to obtain full market value for the disposition of the interest in both the option and the purchase, and that would be true. What we've done is reconfigured that agreement to a purchase agreement so the entire proceeds can be applied to the purchase price without violating the fiduciary duties of the Board.

207-3 SALE OF THE OLD PINE HILLS CAMPUS AT PUBLIC AUCTION
 §7-2-302 MCA

Ms. Sexton said this is the public auction sale of the old Pine Hills campus in Miles City and is through the request of the Department of Corrections. It is the old Pine Hills facility at the edge of Miles City. We had an appraisal done for the value of the property as is, one parcel in its current condition, and also as if the property were vacant land. The DoC has developed some deed restrictions to ensure the property separation from the current Pine Hills campus.

Steve Gibson, Department of Corrections, said basically this land isn't trust land, it is adjacent to the new Pine Hills. Some of these buildings have been abandoned since 1992. There has been a lot of interest expressed in the community from local developers to do such things as clinics. I don't know what all their plans are, but of course, they would go on the taxpayer's role in Miles City. These buildings have broken windows, we've had people resting in them and it is a liability for the state. The cost of the demolition, which we will try to get through but usually doesn't go through in long range because of other needs, is estimated between \$750,000 and \$800,000. Whoever buys this property takes the liability for that land.

Mr. McGrath said I am concerned about the liability issues of the purchaser for asbestos reasons.

Mr. Gibson said it is in the agreement which calls for the purchaser to take liability. There has been an asbestos study. A couple of the interested parties will have a plan in their contract, when this comes to public auction, as to when they demolish those buildings and they would be responsible for all the liability. The agreement at the auction would be they take total liability for all the standing structures.

Mr. McGrath said when you get to that point would you make sure our office looks at those contracts?

Mr. Gibson said certainly.

Ms. Sexton said again, the recommendation is for approval for a proposed sale with the minimum bid of \$390,000. This is "as is" condition, and this parcel would sell at the minimum bid or higher through an auction.

Motion was made by Mr. McGrath to approve the sale of the old Pine Hills campus at public auction. Seconded by Mr. Morrison. Motion carried unanimously.

207-4 THREE CREEKS TIMBER SALE #1

Ms. Sexton said this is the first of three proposed Three Creeks Timber Sales and is under the proposed Three Creeks Comprehensive EIS which has been underway for the last several years. The second and third proposed sales are planned to come before the Board in the next fiscal year. There are 12 units on 679 acres and is located in the Swan Unit close to Swan Lake. Rather than discuss only this sale, David Groeschl is going to give you an overview of the entire Three Creeks area, the EIS process, and then the specifics to this particular Three Creeks #1 679-acre timber sale.

David Groeschl, DNRC Forest Management Bureau Chief, said as Ms. Sexton indicated, before the Board today is the first of three proposed timber sales in the Swan related to the Three Creeks project. This project reminds me a little bit of the movie *Shrek*. If you haven't seen the movie it is about an ogre and a donkey who go on an adventure to save a princess from a fire-breathing dragon. During their adventure, the ogre and the donkey are talking about people's perceptions of ogres. The ogre says to the donkey, "Ogres are like onions." And the donkey says, "You mean stinky and smelly?" The ogre says, "No, onions have layers, ogres have layers." What he is trying to communicate to the donkey is there is more than meets the eye, that to appreciate an ogre you have to look at all the dimensions and layers. The same is true about this project in that it is easy to either misunderstand or misrepresent it without looking at all the layers and dimensions. That's what I hope to do with this overview, peel back some of these layers and look at the project so everybody has an understanding of what is involved.

One of the key words or concepts that underlies everything we do in the forest management program is really the word or concept of balance. In every project, including the Three Creeks project, we worked hard to strike a very important and delicate balance in everything we do. There are five main dimensions to sustainable forestry that we try to strike a balance among. (1) The first dimension is ecological/biological. Is the project ecologically or biologically sound? Is it based on sound science? We ask that question all the time in the development of our projects. (2) The second dimension is physical or operational considerations. That deals with things like steepness of slopes, the type of soils we're operating on, what kind of physical barriers we are dealing with – like a stream crossing. What kind of transportation plan is needed? What type of harvest equipment should we use on a project? (3) The third dimension is economic considerations. Not only what is the revenue that would be generated from a project like this for the trust beneficiaries, and in this case K-12 education, but what is the impact to the local economy as far as the jobs it supports and the wages it represents? What about the raw materials that are generated from a sale like this that help support the local business infrastructure so we can maintain these forests as working forests in perpetuity? That's the third dimension. (4) The fourth dimension is a social-political dimension. That is, how does the public use these lands? What are their concerns and how do we address those concerns in the design of a project like this? (5) The fifth dimension is the legal or trust duty considerations. That provides us the framework, or sideboards, under which we intertwine those other four dimensions.

MINUTES
February 20, 2007
Page 4

What does that mean for the Three Creeks project? The Swan River State Forest is about 38,000 to 39,000 acres. The Three Creeks project area encompasses about 10,383 acres. Within that project area, we are looking at treating approximately 1,884 acres, or 18% of the project area. The area will be treated over the next three to four years through a series of three timber sales, each ranging in size from 6 MMBF (million board feet) to 9 MMBF and several small permit sales. The sale that is before the Board today is the first of three sales proposed in that project area, and it is 6.8 MMBF. Within the project area of 1,884 acres we will be treating about 1,222 acres of old growth, and I'll go into why we're treating old growth a little bit later.

We are building approximately 19 miles of new road, 13 miles would be permanent road, six miles would be temporary road that would be removed after the project. We will remove six old crossings and we are bringing the existing roads up to BMP standards. There are several other mitigations such as riparian buffers, visual screens along roads, reserve islands to break up sight distances for grizzly bears, and all the roads are closed roads except for 4/10 of a mile. The roads are in compliance with the Swan Valley-Grizzly Bear Conservation Agreement. That gives an idea of the project area.

Why the Three Creeks project? There has been some folks' feeling that the Three Creeks project is driven by the volume or hard target. I will address what the sustained yield really means. But what is one of the drivers of the Three Creeks project? The Three Creeks Project's main driver is addressing insect and disease issues. We have chronic, widespread and increasing levels of insect and disease issues in the Three Creeks project area. That is represented by the amount of mortality we are experiencing in the project area. The different colors on the slide represent the different years the flights were taken to look at insect outbreaks. It is the amount of mortality we are seeing through the different years. The mortality is spreading, coming together, and increasing in nature. That is one of the main issues we are trying to address. Forest health is poor, vigor is low, mortality is high. Mr. Groeschl showed slides of aerial photographs of the Three Creeks project area where you could see the dead tops of the larch infected with Dwarf Mistletoe, he said the red trees are dead Douglas fir with different pockets of dead fir spread throughout the entire area, the Grand fir is rotting with a defect level of 60%, the highest defect level we've ever had for Grand fir. Overall on the project, this first project, the average defect level is 40%. The main focus of the project is trying to address the insect and disease outbreaks. Bark beetle is responsible for a lot of the large dead Douglas fir trees. The larch in these stands have a lot of dead tops and are infected with Dwarf Mistletoe, we can't leave the infected larch like this because the Dwarf Mistletoe infection on the trees that are left will infect the regeneration of young trees. The goal in removing the dead, dying, or infected larch is to prevent the infection of the young regeneration.

I want to address the aspect of what the sustained yield really represents. He gave a summary and said when looking at Benchmark #1 done in 2004, it had very few limitations built into the model except for snag and snag recruits required under law. What the model showed us was the biological potential by land base. If we were not taking many things into consideration other than volume and revenue, the sustained harvest level could be at 94.6 MMBF which would generate a revenue of about \$436,000,000 to the trust beneficiaries over the model period, which is 175 years. What we did then was in the model we started to incorporate all our commitments, ecological, biological, commitments such as moving towards historic cover types, providing wildlife habitat, fuel reduction goals, all of that is incorporated into the model as well as old growth rules and then we incorporated those commitments into the model. The model showed that the sustained yield, given those environmental commitments, was tempered and brought down to 53.2 MMBF with a revenue over the 175 years of about \$146,000,000. That is a significant commitment to our stewardship goals. We are realizing about 42% of the potential revenue from what is biologically possible there. What does the sustained yield really represent to us? The sustained yield is not just a volume or revenue target. What the sustained yield represents is a gauge for

where we need to be managing in order to achieve all of our ecological and biological commitments, which is moving towards historic cover types, which is providing certain amounts of wildlife habitat, different species and age class distributions on the landscape, meeting goals to reduce fire hazards – fuel loads. The sustained yield represents much more than just revenue or volume. Those are by-products of good management. That is the key to understanding what sustained yield is all about.

What does it mean to the Swan River State Forest in particular? Of the 53.2 MMBF for the statewide sustained yield level, the harvest allocation on the Swan is 6.7 MMBF annually. Does that mean we achieve that every year? No. What that means is some years we are under that, some years we are over that, but over the long term we need to be harvesting about 6.7 MMBF on the Swan. Is that sustainable? Our annual growth on the Swan, depending upon the productivity value that is used, and we've got different productivity values that were used in the sustained yield versus the FIA data by the USFS versus our SLI data, shows the annual growth on the Swan ranges between 7 MMBF and 11.2 MMBF per year. We also currently have a standing volume on the Swan of 395 MMBF. Given our harvest level of 6.7, growth exceeds harvest. The additional growth is being added to standing volume every year on the Swan River State Forest. What could affect that harvest allocation? Could it change? Yes. That's why we recalculate the sustained yield every ten years or sooner to reflect changes on the landscape, changes in policies or rules, and like our HCP, we are recalculating it right now associated with the HCP.

Mr. Morrison asked does that marginal difference between the harvest allocation and the annual growth mean the forest is gradually getting denser, I assume the boundaries are not changing, so what does that mean?

Mr. Groeschl said that in some ways means our age class is getting older. We have quite a bit in the Swan in older age classes, basically 100 – 150 plus age classes are increasing and we have to try to maintain some of the younger age class. What will happen over time is if we're not harvesting enough of our older age classes we can run into problems with age class distribution and forest health and vigor issues down the road.

Mr. Morrison said so, the forest tends towards old growth essentially and towards bigger trees, even though it means additional MMBF.

Mr. Groeschl said and a denser forest with the encroachment of shade-tolerant species. We're getting trees that are getting bigger, older, and we're getting strong development because of forest succession of the dense understory, the shade-tolerant trees.

Mr. Morrison said at some point... you say you reevaluate everything every ten years and that probably addresses the need for adjustment but at some point that annual growth of MMBF is going to start going down.

Mr. Groeschl said as your forest gets older, growth starts to decline. The future state is that you try to manage and maintain an appropriate age class distribution. If we were managing a bit more intensively or aggressively, your growth actually increases. What happens is at some point if you're not managing at the appropriate level you set yourself up for potential catastrophic wildfire which then will be something similar to the scale like we had on the Sula State Forest occur and we'd lose quite a bit of habitat and older-age class forest.

One issue that has been raised associated with this project that I thought would be good to go over is the questions raised about the watersheds and riparian areas. There are three key riparian areas: Soup Creek, Cilly Creek, and South Lost Creek. There has been some confusion about what kind of vegetative buffer

MINUTES
February 20, 2007
Page 6

we are maintaining along those areas. The 25-foot no-cut has been emphasized as being the vegetative buffer but there is a much greater vegetative buffer than the 25-foot no-cut zone along these riparian areas. If you were to look at the actual riparian stand data we plugged into a model, along the areas not being harvested under law we are required to provide a 50-foot SMZ no equipment, but within the zone we can remove up to 50% of the trees eight inches or greater. This is what we are required, under law, to maintain. But what we are actually doing on the Three Creek project is we have a 25-foot no-cut zone which is in addition to and above the SMZ law, where there will be no trees harvested or removed. From the 25-foot mark out to 95 feet, we will be removing up to 50% of the eight inch trees or bigger and maintaining at least 50% of the large trees with most of the understory trees. In addition, in some of these areas we are leaving an additional width out to 150 feet to provide for wildlife connectivity along some of these. Also, in the upland areas that are being harvested adjacent to this on the three main drainages, the harvesting is only typically occurring on one side of the drainage. One side of the drainage will be completely left unharvested while the side being treated will have a vegetative buffer that is 95 to 150 feet in width. In the upland area, treatments vary from a seed tree to a shelterwood to commercial thinning. It is not as if all the trees are removed. There is a feathering and filtering effect that occurs because we have residual trees left after the harvest as well. These riparian vegetative buffers provide sediment filtration, shading for maintaining stream temperature, and coarse woody debris recruitment. We've modeled these vegetative buffers that are proposed on the Three Creeks and it shows no significant change to stream temperature and coarse woody debris recruitment. Models showed a 2/10 of a degree temperature change and no difference in coarse woody debris recruitment over the long term. That gives you an idea as far as what we're required under law to do versus what we're actually doing on the ground.

Mr. Morrison said does equipment come inside the 75-foot buffer or does it reach over into it?

Mr. Groeschl said the equipment has to stay at 50-foot, that's in the SMZ law.

Mr. Morrison said so you will have between 95 and 50 equipment in there?

Mr. Groeschl said there will be equipment in the 95 to 50 and then to remove some of the trees from 50 to 25 they can reach in with the boom on the harvester and remove some of the trees. That 50-foot "no equipment" line will be flagged or marked on the ground.

The other issue that has come up and I wanted to address was the riparian areas as far as bridge crossings and sediment delivery to these important fisheries. There are six old crossings that will be removed in this project as part of the restoration we have built in to the Three Creeks project. The areas that erode out at the ends of these crossings is where sediment is being delivered into the drainages. Some of the old crossings are problematic, they were put in in the 1920s through the 1940s, the logs lay down in the creek with old stringers across them, and then they piled dirt on top. As those give away, they deliver sediment directly into these streams. When the water level gets high enough it cuts right through and delivers sediment. He handed out a table showing estimates of sediment delivery and said folks have asked isn't the project going to deliver more sediment to these important streams? As you can tell from the alternative that was selected (Alternative B) this incorporates the removal of the old crossings and the new roads that are being built. It shows, based on the sediment delivery delivered by those old crossings, there is an old road in the SMZ we are going to remove and obliterate then move the road up-slope, then the new roads being built are all factored into these sediment budgets. What this is telling us is based on the analysis, that in South Fork Lost Creek we will be reducing sediment delivery from those sources by 97% even with the new roads. In Cilly Creek we will be reducing sediment by 34%, and in Soup Creek we will be reducing sediment by 95%, associated with removing those old bridges and that even includes the road building that has been identified under Alternative B.

MINUTES
February 20, 2007
Page 7

The sale that is before the Board today, Three Creeks #1 sale which is the first of three, would harvest 6.8 MMBF and would cover 679 acres out of the 1,884 acres that are scheduled to be treated. We would be treating 420 acres of old growth in the first sale, out of the 1,222 acres that we plan to treat of old growth. The public involvement process for this sale was started in February 2004 with the initial scoping. We had a 45-day comment period, we held tours, and after publishing the DEIS we had another 45-day comment period. I met with several groups to hear their concerns regarding this project. Again, we tried to develop and design this project to incorporate some of their concerns and, in fact, one of the alternatives we considered and analyzed was Alternative E which was a direct result of the public input which was to address the number of acres of old growth we were treating and the number of roads we were building.

What about the issue of old growth associated with the project and this particular sale? Of the old growth being treated in this sale, about 420 acres, approximately 137 acres of it will still meet the department's definition of old growth. Two hundred and eighty-three acres will not. Why are we treating the old growth? Basically the old growth areas we are treating are unraveling, falling apart, health is very poor, we have a lot of mortality due to insect and disease issues. We have the encroachment of a lot of the shade-tolerant species: Grand fir, sub alpine fir. He displayed a chart showing the inventory of the forest from the 1930s to present. Western larch and Western white pine were the two dominant types. Currently, the mixed conifer is the dominant type. The old growth is predominantly the mixed conifer type due to the encroachment of the shade-tolerant Grand fir and sub alpine fir. Those species are not as resistant to disease and insects as are the seral species like larch, white pine, and Douglas fir, some of the species that we're trying to maintain. The seral species are declining while the shade tolerant species are increasing in abundance. The other thing is, the way we can move some of that acreage toward the historic cover types is by treating it and moving it towards the large Douglas fir and Western white pine types and that's what we plan to do. Those areas are going to be addressed either through planned management activities such as a harvest or forest rejuvenation will occur through an unplanned event such as a wildfire. Either way, forest rejuvenation will occur somehow on the landscape. To try and move this towards historic cover types, we are treating those areas where we see the greatest problems.

What are some of the benefits associated with the Three Creeks project? (1) Reducing the short and long term insect and disease issues in the project area; (2) improving vigor and productivity of the areas being treated; (3) reducing sediment to those important fisheries by removing those old crossings and BMP-izing the existing roads; (4) actually promoting biodiversity by moving those stands that are predominantly mixed conifer and where we have most of the old growth today is in the mixed conifer type, we'll actually be moving them back towards historic cover types and species composition; (5) reduce fuel loads and ladder fuels which are caused by those shade tolerant species; (6) improving access for recreational use of that property; (7) benefiting local economies. This Three Creeks project is estimated to support 252 jobs with wages up around \$10 million. And lastly, (8) generating revenue, approximately \$3.2 million to support K-12 public education in Montana.

Governor Schweitzer said we will take public comment now. Those who are proponents of the timber sale will speak first and please limit your comments to three minutes.

Proponents:

Jason Todhunter, Montana Logging Association, said our association has approximately 600 small business members scattered throughout the state and we strongly support the Three Creeks project.

Neil Meyer, Swan Valley, said I've worked in the woods and walked in the forest for the last 50 years. I am here to give my take on the Three Creeks management sale. DNRC has given me tours two times of

MINUTES
February 20, 2007
Page 8

this area, it is a good project. They are working to enhance the resource by saving old growth, creating openings for new growth, and working to provide old growth recruitment. This will provide economic benefit and also reduce the fire hazard. As these timber stands are now, they are a fire waiting to happen. Let's use this sale to provide economic benefit and a healthier forest. I believe it is a moral sin to waste a resource. Another good thing about this sale is they are going to treat weeds, fire, and insects and disease.

Chuck Roady, F.H. Stoltze Land and Lumber Co., said I speak not only for our company but for other members of the Montana Wood Products Association. We support the decision of the Swan River State Forest Unit Manager and the DNRC to select the action Alternative B on the Three Creeks project. Alternative B, as Dave stated, treats 1,674 acres of state forest lands suffering from bad insect and disease infestation. These acres comprise the overwhelming majority or 89% of the 1,889 acres he referred to that they will include in the treatment in Alternative B. The tree mortality is very high in the project area and the economic value to the school trust is presently diminishing at an alarming rate. This alternative will do the best job to restore the health of the forest, it will reduce further spread of insects and disease, and will capture most of the value for the school trust before it is lost. Alternative B will improve approximately 47 miles of existing road by upgrading the current BMP standards to reduce sediment delivery and erosion. I have been in that area myself, I am on a BMP audit team and I have been there. Those old roads could use some help. An additional 13 miles of new road will be constructed to provide access to the project area and it will also help with future management of that area. The Three Creeks project as well as all the other DNRC sales is important to help sustain the forest management infrastructure of the forest products industry. The existence of a healthy forest products industry has tremendous value to the trust land providing competitive prices for the timber sold and an important tool kit necessary to continually manage these lands for future generations of Montanans. Projects such as Three Creeks benefit the trust by improving the health and growth of the state forest and consequently increasing their annual rate of return. I ask the Board to approve this project and I hope you can start implementation soon.

Larry Westcott, Pyramid Mountain Lumber Inc., said we employ 155 hard working Montana families. I am here today in support of the Three Creeks #1 timber sale proposed by DNRC professionals. In Seeley Lake we are surrounded by Plum Creek and Forest Service lands, so DNRC timber sales are critical to providing predictable opportunities for much needed saw logs to source our mill. As a certified professional forester, this sale meets or exceeds the care and management I would like to see from our DNRC resource professionals. Having visited all the units on this proposed timber sale it is my opinion that the treatments planned are needed to return these stands to a safe and productive state. The future condition these treatments will provide give diversity allowing these forest stands a better chance to survive insects, disease and wildfire. The conditions these forests stands are in at this time increase the hazard to our firefighters and wildlife presence. A large population of insects such as Douglas fir bark beetle currently exist and has created a large fire hazard. Adding to the insect problem is the presence of Indian Paint fungus. The majority of the Grand fir in these stands are infected with this disease causing high mortality and fuel loading. These components have created the elements which result in a stand replacement fire. By removing these trees that have been invaded by insects and disease along with a stand maintenance plan, the long term vigor and health of the remaining forest would increase. With a healthier forest more chances for safe recreation exists and a sustainable management of our forest lands provide items we all depend upon. In closing, Pyramid appreciates the opportunity to comment in support of the proposed Three Creeks #1 timber sale and encourages the Board to support this project as proposed in order to provide small family-owned sawmills like Pyramid with certainty and raw materials both now and in the future.

Ann Dahl, Swan Ecosystem Center, said we're a non-profit community group and work in partnership with all the agencies involved in the Swan Valley because of the checkerboard ownership. I find myself

MINUTES
February 20, 2007
Page 9

in the uncomfortable position of seeing all points of view and knowing they are all right. The reason I want to talk today is a little different. The previous speakers have talked about the values of the forest and the timber sale planned. I would add it is a wet and warm environment, it grows trees rapidly and is fairly resilient and forgiving of human mistakes. For that reason I would support the Three Creek #1 timber sale. I am mostly concerned with the loss of the timber-based economy with Plum Creek selling the land in the Swan Valley. We are going to need DNRC's help if we are going to protect not only the timber-based economy but the ecological integrity and the rural way of life. I am afraid if the timber sales proposed in the Swan River State Forest can't succeed, the DNRC won't be interested in acquiring any more land in the Swan Valley and we will lose it all to second-home development. I am asking the Board to give the state foresters a chance for sale and let it succeed.

Opponents:

Michael Garrity, Alliance for the Wild Rockies, said I am here to oppose this land sale. Mainly I don't think the department has done an accurate cost benefit analysis. The benefits estimated in the FEIS have revenue of \$34 per ton and this timber sale is going to be sold estimated at \$25 per ton. The sale price is over the whole sale area and is a loss of revenue for these logs. And secondly the costs are estimated system wide not based on a sale. The state legislative auditors told me the computer system allows you to use site-specific cost estimates. DNRC is not doing that. Someone sued DNRC in the Goat Squeezer timber sale on that issue, the Supreme Court ruled 4 to 3 that it was legal to use system-wide costs. Just because it is legal doesn't mean it makes good business sense. The legislative auditor told me any good manager would want to know this specific information. Finally, the price of the timber is down at a 10-year low, it has fallen 50% from last two years, in trying to maximize the revenue to the school trust this might not be a good time to offer this sale.

Arlene Montgomery, Friends of the Wild Swan, said my comment here applies to the entire EIS, not necessarily just to this particular sale that is before you today. Over 1,200 acres of old growth is going to be logged with this project. DNRC claims that half of those acres are still going to meet the old growth definition they are using, but this is a mis-use of that definition because they are only using the large tree minimum not the other attributes of old growth that are contained in the *Green et al* definition, such as basal area, snags, and other components of old growth forests. The treatments they are proposing are even-aged management and those will reduce these attributes of old growth. The technical review committee that DNRC contracted with in 2000 stated that, "considering such manipulation of old growth as appropriate and relatively certain to give the anticipated results is an informed guess at best and therefore, encompasses some unknown level of risk." In other words, producing old growth habitat through active management is an untested hypothesis. So their whole old growth analysis is based on this flawed assumption and untested hypothesis. They have no plan on the Swan River State Forest for how they are going to retain old growth on the landscape in the long term. We are seeing more old growth logged as the sustained yield or the timber target has been increased. More logging, less connectivity for wildlife, and less biological diversity. There is no plan for recruiting old growth. There is no provision for putting stands on longer rotation so they develop old growth characteristics and will replace the existing old growth over time. There is no provision for putting stands on longer rotation so habitat is connected. There is no provision for putting existing old growth stands on longer rotation so this component of the forest is maintained. The existing standing volume you saw at the rate of this timber sale would log would deplete that existing standing volume in 50 years. That would be altering 2/3 of this timber sale which is old growth. This project will also build 19 miles of new roads. Roads negatively impact wildlife and as well as fish and fish habitat. The existing road density and secure habitat on this forest are below what they should be. The Swan Valley Conservation Agreement is being revised at this time and the US FWS considers this to be a mortality state for grizzly bears, meaning more bears are dying in the Swan State Forest than are being reproduced. These 25-foot no-cut buffers, I think you need

to know the last two timber sales on the Swan River State Forest had 155-foot no-cut buffers to protect fish and to protect the fish habitat. DNRC is regressing with this sale and there is now less protection for imperiled endangered fish. The two streams, South Lost and Soup Creek, are designated critical habitat for bull trout. They deserve more than a 25-foot no-cut buffer. This is another unproven strategy. We are frustrated that our comments were not taken seriously and that no changes to the timber sale were made as a result of the comments we submitted. There is no baseline data for wildlife and that is something we are asking Canada to do with the Kline Mine, but yet we are not doing it here on state land. DNRC is also changing how it is presenting this timber sale. Now they are saying it is bugs and disease and I am sure any forest does have bugs and disease but in DNRC's April 2005 newsletter they said the annual harvest was reallocated and so the results were an increase in this project from 10 – 15 MMBF to 20 – 26 MMBF. Dan Roberson commented on a field tour when we asked him why they were logging in old growth that they could not meet their harvest target for this sale if they did not log old growth. So I think saying the target doesn't have anything to do with this is a little bit disingenuous on the part of DNRC. I'd like to address some of the components of this sale. They are building 19 miles of new road, they are relocating the South Lost Road, they are going to do work on 47 miles of existing road, three miles of road reconstruction, two miles of road obliteration, bridge crossings work along with the logging. This has tremendous short term impacts on watershed. If the Forest Service were doing this much road work in a drainage at any one time, it would have to consult with the US Fish and Wildlife Service over the impacts to bull trout. So they did not analyze those short term effects.

Anne Hedges, MEIC, said as you know, MEIC rarely opposes timber sales. We rarely come before you on timber sales. We recognize the important need for cutting timber on school trust lands. But this sale, and the subsequent sales you'll hear about in the next couple of years, have fundamental problems. I've met with Mr. Groeschl and figured he had a good presentation. He informed me of a number of things I was unaware of and I appreciate that but I still think there are some fundamental problems that I'd like to address. Four years ago, starting in 1998, we started arguing over the definition of old growth on state school trust land. It was a long time ago. And what I find is we are still arguing over the same issue. In 2003, we passed the State Forest Land Management Plan (SFLMP) and that plan recognized the inherent value of old growth. It has more biological value than other areas of forest and that is why you keep hearing the debate regarding old growth. We appreciated and supported that adoption of the rules because we believed it gave adequate protection to old growth. It said how we were going to manage that old growth. We were concerned about implementation. We knew the devil was in the implementation of those standards we created in the rules. Those rules were based upon something called historic condition. We were looking at historical conditions of land, we were going to create desired future condition based upon that. We believe what we have here is a fundamental difference of opinion about what historic condition is. That is a really fundamental issue that this Land Board is not capable of resolving today, but it needs to be resolved. Three years ago we argued over the sustained yield for the same reasons, we were concerned about the inclusion of old growth in the sustained yield and how those two things were going to mesh. And here we are. We believe this timber sale and the ones coming in the future are pitting those two things against each other: the increase in the harvest from the sustained yield study and the rules that do give special protection, special recognition to the value of old growth. We believe those two things are pitted against each other and sustained yield won. We believe DNRC's response to our comments on what historic condition on the landscape should be was at best unresponsive, at worst it was snide in its responses to comments. That was troubling. It indicates a more fundamental problem that we need to address particularly on the Swan because of its value. We believe the alternatives didn't provide an adequate range of alternatives. Either you chose more roads or you chose more old growth being cut. And that didn't seem like an adequate range of alternatives, we felt they could have done a much better job and we hope they do in the future. We feel the buffers on these sites are insufficient. They are insufficient for bull trout in particular and cut throat trout as well. We think you should be increasing the buffers to a no-cut for that entire area DNRC is talking about protecting. The very last thing is really just

MINUTES
February 20, 2007
Page 11

a fundamental problem with the web site. This data is very very difficult to find on the web site. I see no reason why EIS's, DEIS's, Record of Decisions, things like that cannot be on the web site as soon as they are available in written form. It makes no sense to me. DEQ does it all the time. It is very frustrating. I would urge you to inform the public better through the web site.

Motion was made by Mr. Johnson to approve the Three Creek #1 Timber Sale. Seconded simultaneously by Mr. McGrath and Ms. McCulloch.

Mr. Johnson said I want to say I am not a forester but I understand that no management is not good management of our forests and that old growth is not by definition healthy growth. In my 26 months in working DNRC and their foresters they have shown themselves to be consummate professionals and I for one as a member of this Board am not going to start second guessing them now.

Mr. Morrison said I have two questions for David. There was a critical editorial in the *Daily Interlake* and what it focused on was the emphasis on moving timber targets as opposed to forest management. There has been discussion here about Dan Roberson's comments during the tour and about a change in the department's focus on what to emphasize. Now its disease and previously it was timber targets. My question is this, if you are simply basing this on forest management values and did not have to take into consideration harvest targets would there be a significant difference in the volume being harvested here and, if so, what would it be?

Mr. Groeschl said some of the reasons why the project expanded is when we do an initial scoping like this it is usually based off of preliminary stand level inventory data and photo interpretation from the aerial flights to get an idea of what we need to be looking at. The rough volume estimates are given early on and are usually pretty conservative in nature. Until we get on the ground and actually do field reconnaissance and see the extent of the problem, especially the disease problems, we don't know how much it might grow. The other concern that folks raised about the sustained yield is what the sustained yield told us was that the initial harvest amount on the Swan River State Forest was insufficient in order to maintain healthy and diverse forests over time. As a result of that, it makes us reevaluate projects and say we need to be harvesting at a different level here in order to meet all of our goals and objectives for the Swan River State Forest. That at times means increasing the harvest level to achieve the diversity and the historic conditions on the landscape. Those are some of the reasons. From an ecological perspective, would we still have a project here of 20-26 MMBF as was outlined in the project. If we are truly managing our landscape at the ecological level that the sustained yield is really telling us for managing on the landscape, then it goes to reason that our projects will vary from small to large in order to emulate what would occur naturally on the landscape. Some projects will be small because that is what good management dictates because that is what we're trying to address there, and the extent of the issue we're trying to address might be isolated and small. In the Three Creeks project area what we're trying to address is we're trying to take a very holistic approach to this and I don't think the project could be any smaller. What we've tried to do is design the project to meet all of our goals that we're trying to achieve there from an ecological, economical, and legal perspective. Some have argued we should not have a sustained yield target. To me that would be the same as setting aside the SMZ law or any other law since the sustained yield is a legal requirement for us to calculate to give us that gage or benchmark. We can no more set aside the sustained yield number than we can the SMZ law or any rule that we operate under because it would have ecological, economical, legal, and operational ramifications. So, a long answer, I don't think the project itself would change that much given what we are trying to achieve on the landscape.

Mr. Morrison said the other major concern I had was the buffer zone issue. There has been a lot of discussion about this. Arlene, in her letter, talked about the buffer zone that the Forest Service Inland

Native Fish Strategy requires, 300-foot buffers. There has been the discussion and the bull trout group's recommendation of 100-year floodplain plus the 150 and sometimes the entire watershed. There has been the discussion of 165-foot buffers on prior harvests in this forest and you're talking about something much less than that here. What is your response to that?

Mr. Groeschl said I am not a hydrologist, nor a fisheries biologist. But knowing what we've gone through and choosing the riparian strategies for the HCP with the US FWS and the information that has been used in the development of those strategies, knowing what the SMZ law requires. The inland fish buffers of 300 feet were developed on the west coast basically where you have significantly more rainfall, where you have very different forest conditions, and where you have very different soil conditions. From early discussions with the US FWS part of coming up with the 300 foot as all their efforts in modeling show the 150-foot was actually more than sufficient and in order to demonstrate where they were working on federal land a "no take" approach under ESA, they doubled it to make sure they wouldn't have any issues down the road. Throughout all of our work with the US FWS in developing the riparian strategies, they go above and beyond the SMZ law. So far we have not seen as we are collecting pre-harvest and post-harvest data on our timber sales, and we will be collecting it on Three Creeks, we have not seen where the SMZ law is inadequate in meeting stream shading and coarse woody debris requirements. The buffers we're putting on the Three Creeks sale are above and beyond what we are required to do. We typically do not have large "no cut" buffers. I am unaware of the 165-foot "no cut" buffers on previous sales. Occasionally you could put large "no cut" buffers on a timber sale because of what we call channel migration. If a channel were likely to migrate in a wide area we would typically extend the "no cut" even greater in order to accommodate that possible migration of the channel. For most of the riparian areas on the Three Creeks sale those channels are well defined and contained because of the topography of the landscape. So, there have been occasions when we have used a wide "no cut" but I am unaware of previous sales on the Swan whether or not we've done that. But we feel given that the hydrologist and the fisheries biologist who designed these riparian buffers believe they are more than adequate to address shady requirements, coarse woody debris recruitment, sediment infiltration, and wildlife connectivity for wildlife movement through those areas.

Mr. Morrison said do you believe that in prior harvests in the Swan River Forest that where there is a channel that is not migrating that the buffers you were using here are consistent with what was done before?

Mr. Groeschl said I would venture that when we look at all the timber sales on the Swan over time, and you could point to ones where we've done them with greater vegetative buffers, but over time I would say this is consistent with or even exceeds what we typically do on the Swan.

Mr. Morrison said has there been any change in your position about the buffers as you talked with some of the groups that had concerns about the harvest over the last few weeks?

Mr. Groeschl said we've tried to understand the concerns and typically we've not heard anything very specific as to why folks feel the vegetative buffers are insufficient. Typically when we talk about vegetative buffers it is whether or not the sediment infiltration is insufficient or large woody debris recruitment or shading for streams temperature, and as I indicated earlier all of our modeling work so far from actual riparian data for South Lost has shown that in the riparian buffers we have for Three Creeks there is no difference between those buffers and the no action for coarse woody debris and stream temperature. I've not heard anything that would make us wonder why folks feel that those buffers are insufficient.

MINUTES
February 20, 2007
Page 13

Mr. Morrison said the last question I have about the buffers is are you using these narrower buffers in comparison to some of these other markers we've discussed for forest management reasons or to meet the target?

Mr. Groeschl said one, I think it is important to note that the buffers are typically only on one side of these important streams, the other side is being left unharvested. So there is a big area for any movement. The other thing is all the modeling shows the buffers we are proposing for Three Creeks are adequate for the reasons I mentioned. The other thing we're hearing and that the science is showing us, is these riparian areas experience disturbance over time. Sometimes these patches are small within the riparian areas, sometimes large areas of the riparian areas are affected by natural disturbance which provides a pulse of nutrients to this watershed. These are important as the fisheries have developed under those conditions. What the science is also showing us is an unmanaged buffer may not be the best approach, that these managed type of buffers are a better way to go as far as meeting long term riparian functions for coarse woody debris recruitment, pulses of nutrients to the watershed periodically. So it is more from an ecological sense that we are looking at these managed buffers.

Ms. McCulloch said Ms. Sexton you have not had the benefit the last couple of years to hear me on my soapbox about access. Access is not just access to our public land, which is very important, but as someone who came out of a public school, who runs a public agency, and who to the very core of my being is a librarian, information access is very important. One of the comments was something about information not getting up on the web quick enough. I know from experience of running an agency, I have truly wonderful web people who live and die to do this, but it is still difficult to get things up quickly. Is there a problem with getting the information up? And if there is, is there a way you can make sure that information is accessible as soon as possible?

Ms. Sexton said we have within the last year and a half hired a specific web designer. Prior to that time we had one public information officer who was doing everything from press releases to web designing to e-mail responses. We have hired a web designer and she is up and running. We have improved our access for the public I think substantially over the last year and a half. If there were problems in getting this out to the public I did not realize that and we will certainly make every effort to try and make that available. We have expanded our web site substantially over the last year so we are making every effort to try and make that information available as quickly as possible. I think the EIS came out at Christmas time, December 18, and I don't know when we had this available on the web site but we have made very effort when we have Records of Decision and that kind of thing to get it on the web site as quickly as possible. So we are trying to improve that, and if we can help folks and they could let us know how they want to see us improve more, we are certainly willing to do that.

Ms. McCulloch said my second part of that is directed to the audience at large. Sometimes when we run an agency, especially during legislative times, and we have so many things going on that even the school librarian will forget to put something on the web. So I would plead to the audience that if you see this make sure you let the appropriate folks know. I always make sure we all are involved in making sure the public information is out publicly.

Mr. McGrath said I have a couple of comments. I found this a very difficult decision to make but I've decided to support the department's recommendation and I want to cover a couple of reasons why. The issue I find most difficult is the continued discussions about old growth, what is old growth, what is not, and is it 2/3 of this sale or is it a substantially smaller number. I think those are difficult issues and they are legitimate issues in terms of our trust responsibilities and long term management of this resource. Ultimately the trust responsibilities are what bring me to the point of supporting this sale because I do think as a Board we do have that fiduciary duty to the trust and on balance, the proposal falls in favor of

the sale. There are a couple of other things that I think are important. The sediment reduction issues are extremely important and I think that is a positive development. I also think that while riparian protections may not be totally perfect, I think they are very significant. If you add, mention was made earlier about bull trout, the removal of the Milltown Dam and the Stimson Dam those will be very very significant developments in terms of bull trout habitat and the improvement of bull trout habitat. In fact we will have a much larger impact on the positive side for bull trout development through this sale. Finally the other issue is the disease treatment itself. I do think we have to address management issues, I think we have to face those issues. On balance I think this is a proposal I am going to support.

Mr. Morrison said by the way, David, you did a good job today, it was a very good presentation and thank you for the work you put into that. In looking at the EIS I thought some answers in response to comments were better than others. I think there are some issues that are kind of up-in-the-air going forward. For example, how is the treated side of the watershed going to compare to the untreated side; for example, is there really going to be 137 acres of old growth left on this cut after you've cut 400+ acres of what is there presently; for example, the sediment reduction, is it going to happen? Is the removal of the bridges and repair of the old roads going to have that improvement? One of the advantages we have here is the three phases that this project over time is supposed to go through. It has been suggested to me, and it makes sense and I've talked to a couple of other Land Board members, that we have some kind of advisory group consisting of people representing the different view points in the valley that are brought together before Phase II to evaluate how Phase I has gone in these areas and have a face-to-face instead of having just an exchange of paper words so we can get that interaction going and done before Phase II comes before this Land Board. So, I'd like to ask you what you think of that and ask other Land Board members if they agreeable to creating that kind of advisory committee going forward.

Mr. Groeschl said we are always open to receiving or having a dialogue about what people's concerns and issues are and what are some of the possible solutions. This first project, as you know, is before you today, the second and third proposed timber sales would be brought forward sometime in 2008. So between now and 2008 we can meet with different folks and have the advisory committee talk about what some of the issues are and see if we can find some solutions to some of the concerns they may raise. And try to incorporate those into the development of those next two projects. I don't know if we'll have a lot of time since this project, if we sell it in early April given the advertisement timeframe, we can't do anything until after June 15th because of the spring bear restrictions in the sub-unit. The sub-unit comes open in July, so the earliest you'd actually even see some harvest activity would be probably sometime after July 1st. We will be in FY-2008 by then so we won't maybe see a lot of activity on the ground associated with the first project.

Mr. Morrison said the kind of advisory group I am talking about would really sink its teeth into this after the results of Phase I started to become clear so they could make recommendations and comments to us so we could be best advised as we move into Phase II. I would imagine they wouldn't get involved until sometime later in this calendar year.

Mr. Groeschl said that would make sense. You can go along and look at what we do know as far as on-the-ground work that has been accomplished and look at what some of the monitoring commitments are, even in the EIS, associated with the riparian areas as far as the crossing being removed in each of the projects, the restoration and rehabilitation work that is going to occur, and the roads that are planned to be built in each of these projects. There are definitely things like that they can look at whether any harvest has occurred in various units. Look at what those effects look like after the harvest. A couple of key things here on old growth is in the EIS it was stated very clearly that the old growth attributes that we recognize when we treat the old growth, because it meets our definition, will be reduced in those treated areas. But old growth on the landscape occurs over quite a continuum so that old growth even after

MINUTES
February 20, 2007
Page 15

treatment still meets the old growth definition and still provides benefits to some of the old growth-associated species. And over time we expect those old growth treated areas that still meet old growth, some of those same attributes to increase again over time as the understory comes back and we get a multi-story condition returning and the decadence returning to those stands. That's one of the issues associated with the old growth.

Ms. McCulloch said I have a comment to the Board as to why I plan to vote for this timber sale and it goes back to my philosophy in teaching and my philosophy in state lands are very similar. As a teacher and the State Superintendent its my job to make sure my kids have the very best third grade year I can give them. The very best freshman year in high school that I can give them. But its also very important that the actions I do today positively impact their next year of school, and the next year, and five years after that. So, in addition to planning for good education today, I also have to look at what the potential pitfalls are in the future. What are the unplanned incidents that can occur? Just so you know, I consider No Child Left Behind one of those unplanned incidents. But trust lands are very similar. I need healthy land, I need to make sure these lands provide for my kids and remember the beneficiaries, lets be honest there are 145,416 public school kids in Montana – that's what a beneficiary is. I need to make sure as the State Superintendent who serves on this Land Board that my actions make sure that those children are provided for five, ten, and twenty years down the road. When we get back to looking at those pitfalls and unplanned incidents, the disease and insect problems fall into that area. I believe fire can be a very good thing for managing forests if planned, but fires that are unplanned can wipe out any option in the future. Forest fires can wipe out options for economic development for, frankly, funding the schools for my kids. So what I'd like to see is us making sure we plan for the future and we manage that forest in a way that would benefit my kids twenty years from today as well as tomorrow. I want to thank those folks who sent letters and e-mails mostly in opposition. What that does is it makes me have to take a much longer and broader look at a timber sale that is on our agenda, I have to really dig down for information, I have to find out and ask questions. I have to have my Land Board staffer work overtime to make sure you get those questions answered and that the actions this Board takes in a vote, I take, and is the best thing for my kids as a beneficiary of trust lands that's why I will be voting for this timber sale.

Mr. Morrison said the comment I'd make to that effect is I've also been concerned about this, largely alerted to it by the many letters we've gotten about the issues we've talked about today. Obviously we have a duty here this is a trust land forest we have a duty to use it to generate revenue, but when it comes to providing for the future I want to make sure we leave this forest better than we found it. I've seen some cuts that are good, I've seen some cuts that are bad. Almost all the ones Stoltze does are good. But I think that an advisory committee that allows these people to plug in and make sure we are accountable moving forward in the second two phases for the results in the first phase will go a long way. We haven't identified that as an action item here so we can't really take it up today, if it becomes necessary in the future to approach it as a formal matter then we can do that. I am going to vote in favor of this due to our trust obligation but also with the understanding there is going to be an on-going dialogue and accountability that the way we do this is going to leave this forest better than we found it.

Governor Schweitzer asked what percent of the active timberlands in NW Montana are state-owned?

Tom Schultz, Administrator DNRC Trust Land Management Division, said the state land is about 3.5%.

Governor Schweitzer asked what percent of the wood that goes to the local mills comes from state lands?

Mr. Groeschl said our sustained yield of 53.2 represents about 7% - 8% of the statewide harvest going to the local mills.

MINUTES
February 20, 2007
Page 16

Governor Schweitzer I heard a comment from Michael Garrity that we are at a 10-year low with the value of this timber. Thirty-four is what we are guessing what we might sell the timber for, the suggestion might be we could get 25, I don't know the numbers, but I have a bias. My bias is as a manager of a natural resource which I have made my living from my whole life, I would like to be able as a Land Board member to say let's sell the timber when the price is high and sit on it when it is low. That's what private timber managers do in Western Montana. Unfortunately, now that I am in this position and we have so much land we have to manage, if there isn't a flow of timber during those down years to our local sawmills when the time comes for us to sell our trees 6, 8, 12 years from now when the price is high there may not be local mills. In fact, what percent of the mills we had in Western Montana 25 years ago are still here? Ten percent? Twenty percent? We are at risk of losing the few mills we have left. We have an obligation to keep that pipeline flowing. We are managing a large resource here and it is important for us to keep a sustainable timber program. We took a lot of public comments on this particular sale. What changes did we make to our action plan based on public comment?

Mr. Groeschl said some of the changes that were made, one, we developed an alternative. Alternative E was a direct result of public comments looking at old growth and roads. We also developed several mitigations based on public comment. Those mitigations included the riparian mitigations, the vegetative buffers, and included visual screening along the roads, reserve islands to break up sight differences for grizzly bears, it included the requirements that apply to the Swan Valley Grizzly Bear Conservation Agreement and cannot do any harvesting during the spring period when grizzly bears are most sensitive to activities such as that. So there were mitigations that were developed in order to minimize impacts associated with this project that we've tried to incorporate into the design and the mitigation.

Governor Schweitzer said during testimony I heard a comment referring to the possibility that Plum Creek would be selling property in this same area. There has been some suggestion that the State of Montana either through this Land Board or another vehicle would be an acquirer of some of those resources. It is imperative for this Board and those of us who manage sustainable forests in Montana to demonstrate there is a value in the State of Montana owning timberlands, that we can continue to manage them in a sustainable way and continue to generate revenue for the State of Montana for the schools. I think it is important that we find timber sales that we can support in the Swan. What would be the consequences for the Pileated woodpecker in this area if it was treated through fire? In other words, we did not harvest anything, we went another 5 - 10 years and we got a hot fire that goes through and the Pileated woodpeckers that are living in the snags and dead area where do they go? Do they fly out of these fires? Do they escape? They lose nests. What are the consequences?

Mr. Groeschl said not being a wildlife biologist, typically what happens to any wildlife species, including Pileated, when there is a disturbance whether it is human related or it is natural, there is what we call temporary displacement of those creatures, those species. They would displace to somewhere else while that area is recovering and then re-invade that area once recovery has occurred.

Governor Schweitzer said whether we have mechanical treatment or if a fire occurrence, the consequences are similar?

Mr. Groeschl said the consequences can be similar. But, for example, I'll use the Sula where we had hot stand replacing fires, we are actually through our restoration activities – the planting – we are accelerating the recovery of that area through our planting efforts. If we were to leave it to natural processes it would take much longer because we didn't have seed sources from nearby seed to help regenerate those areas. But through planting we are actually accelerating the restoration and the ability of certain species to re-invade those areas.

MINUTES
February 20, 2007
Page 17

Governor Schweitzer said there has been some discussion about potentially a modified motion, we have a motion on the table. There has been a suggestion of modifying it in some way, that we're not buying the whole pizza we are taking a slice or 1/3 of the pizza at this time and looking at how it worked out, and then taking a look at how it worked out. Do we need to modify that or can we go ahead with this motion?

Mr. McGrath said I think we can handle the suggestions Mr. Morrison made informally. I don't sense any resistance from the department.

Ms. Sexton said we'd be glad to incorporate that on an informal basis and work with you.

A vote was taken on the motion to approve the Three Creeks #1 Timber Sale. Motion carried unanimously.

Ms. Sexton said I do want to thank the public and the staff, there has been a long vigorous process through this effort and I thank you the Land Board members, the public, and my staff.

207-5 SUZIE CREEK SALVAGE LIMITED ACCESS TIMBER SALE

Ms. Sexton said this is another of the fire-related salvage sales, this one is from the Derby Fire. It is located 16 miles southwest of Big Timber. It is 95 acres with six harvest units and has limited access because the Engle Ranch has granted access to one individual for the purpose of salvaging timber. There will be no old growth harvested. The harvest system will be 100% tractor. Access is across existing roads. The department has gone through the public involvement process and there are a few issues with mitigation with road use, access, and construction that have been addressed. I recommend approval of the sale of Suzie Creek.

Motion was made by Mr. Morrison to approve the sale of Suzie Creek Salvage Limited Access Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

207-6 TODD V. STATE OF MONTANA (QUIET TITLE)

Ms. Sexton said this is a suit to quiet title for some lands adjacent to the Yellowstone River near Livingston and was filed in District Court. The department has reviewed the allegations and concluded the state does have claim to some of the disputed lands. This agreement sets out a boundary line between the state and the private ownership that recognizes some stabilized islands belong to the state. There is a map provided. This is a quiet title to each other and there is a lease-back of those lands to Ms. Todd as part of this agreement. I request the Board's permission to execute the settlement agreement in order to resolve the quiet title action.

Mr. Johnson asked if the agreement met legal standards.

Mr. McGrath said our staff looked at this and we are satisfied that it does.

Motion was made by Mr. McGrath to grant permission to execute the agreement. Seconded by Mr. Johnson. Motion carried unanimously.

207-7 PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCEL #376

Ms. Sexton said this parcel was nominated by DNRC at the request of the Rock Creek Cattle Company near Deer Lodge. It is an isolated parcel which is primarily grassland with approximately 220 acres of timber. There is no public access. This has gone through quite a process and we do have maps describing this proposal. We will have a deed restriction on this allowing development to occur on only 25 lots. This is a planned subdivision that has gone through the planning process in Powell County. If we do not participate in this, there will be development anyway but it does give the state the advantage of a conveyance that is associated with this. There have been a number of mitigation factors here that the developer has worked with the planning board and surrounding community. This is the first of three proposals that will come before the Board from Rock Creek Cattle Company. The first is the land banking proposal, the second we are looking at an access issue, and the third is a land exchange. These will come within the next couple of years. This has a deed restriction placed on it for development, and we feel with the perpetual conveyance fee that this is a positive proposal for trust lands.

Motion was made by Mr. McGrath to grant preliminary approval to sell parcel #376. Seconded by Mr. Johnson.

Mr. Johnson asked if it was actually a full section for sale.

Ms. Sexton responded yes it is, Section 10. It has mostly grasslands and then the 220 acres of timber lands. Surrounding this property are a number of conservation easements, the development is going to be in the western end of the property. There will be a total of 220 lots of which 25 lots will be on state trust land. We will go through the due diligence, getting appraisals, and that sort of thing as the next step. This is for preliminary approval.

A vote was taken on the motion on the table, motion carried unanimously.

207-8 TONGUE RIVER RANCH

Ms. Sexton said this is an update between the last Land Board meeting and this one on the Tongue River Ranch. We had a road access contingency and in the meantime Custer County has declared Moon Creek Road and Moon Creek Divide as county roads and we are awaiting title insurance and are working with title companies for title insurance. Ms. Sexton asked for final approval for the purchase without contingencies, and of course, we have to have full title insurance.

Ms. McCulloch moved for final approval of the purchase of the Tongue River Ranch without contingencies. Seconded by Mr. Morrison.

Mr. Johnson said my staff person indicated there was some question as to whether the title insurance company was going to be willing to guarantee public access or just state access. Have we resolved that issue?

Ms. Sexton said we are working through that. At this point in time, we understand they are willing but we are looking at the terms and description of how that access will be insured.

Mr. Johnson said my concern is if in fact we end up only with state access guaranteed that it could put that \$200,000 from Pheasants Forever in jeopardy. I assume they would be very unhappy with the fact that after having made that investment their members don't have access to this property.

Ms. Sexton said we are looking into the fact that it is a county road which doesn't share public access and we are working with some language that is suitable for us as well as allowing public access. We understand the public access is key here, and the fact that it was declared a county road and county roads do allow public access. We're looking for balanced wording in that.

Mr. Johnson said I suspect we don't know for sure that action by the county commission won't end up being challenged.

Ms. Sexton said we are working through that as well and I think the title report will reflect that as well.

Mr. Morrison said what do you think the title insurance coverage will look like? In other words, if litigation subsequently results in a determination of no access, how will the title company value that? Or how will we and the title company value that for purposes of title claim?

Ms. Sexton said again, that's an issue we are working through at this time with the title company. There are actually several title companies we are looking at. They understand there may be a question here, although they have gone through with the declaration of a county road. We want to be assured the language in the title insurance does cover the state, and for litigation down the road, we would also be covered. So I think our position would be that we be fully covered with the title company for all circumstances regarding the state needs.

Mr. Morrison said but for purposes of a claim, the title coverage would have to correspond to some measure of damages that would match whatever we lose by losing access.

Ms. Sexton said again, I think the declaration of the county road is what is under question right now. That is an issue with the county particularly and we are moving forward very cautiously to make sure we are covered in all contingencies and we can certainly keep you informed of all developments.

Mr. Morrison said in the event we don't like the outcome, we can always sell it. But we have every expectation that we will be keeping it and that the county commission's determination of a county road status will be upheld.

Ms. Sexton said we have gone through a number of obstacles in this purchase and I have every belief that as we move forward we will be able to resolve that equitably and in the state's best interest.

Mr. McGrath said the only thing I'd add as a comment is I think it is important that if there is litigation on this issue that the state intervene in support of the county in terms of public access. And we in the Attorney General's office would be more than happy to assist in that.

A vote was taken on the motion on the motion to grant final approval of the purchase of the Tongue River Ranch without contingencies. Motion carried unanimously.

207-9 RIGHTS-OF-WAY APPLICATIONS

A. Rights-of-Way Applications

Ms. Sexton said this first section of the rights-of-way requests this month are the typical ones, historical and electrical utility. I do have one I'd like to bring to the Board's attention. It is on page 78, and is one

of those ticklish situations which I think we have resolved very amicably between Mineral County and the St. Regis Sewer District and some state trust land with an easement for the sewer. We do have one on page 54 from Valerie Emerson and it is under our new policy. I want to thank the staff for working out the St. Regis Sewer District – Mineral County situation. This month we have #13841 through 13849 are from 3 Rivers Communications for buried telecommunications cable; #13850 through 13871 are from Sheridan Electric Cooperative for overhead electric distribution lines; #13872 is from Beartooth Electric Cooperative for an overhead electric distribution line; #13873 through 13892 are from Lower Yellowstone Rural Electric Association for overhead electric distribution lines; #14007 is from Sauerbier Ranches for a private access road to a single-family residence; #14008 is from Valerie Emerson for a private access road to a single-family residence; #14009 is from Deep Creek Valley Inc. for a private access road for conducting farming and ranching operations; #14010 is from Susan Stansky for a private access road for conducting farming and ranching operations; #14087 through 14103 are from Nemont Telephone Cooperative for buried fiber optic telecommunications cable; #14104 is from Henry and Joan Meyer for a private access road to a single-family residence; #14013 is from Daryl Fladager for a private access road to a single-family residence; #14105 and 14106 are from the City of Kalispell for a public roads Stillwater Road and Treeline Road; and #14107 is from Mineral County-St. Regis Sewer District for sewage lagoons and treatment facility.

Ms. Sexton requested approval of the rights-of-way applications.

Motion was made by Mr. Morrison to approve the rights-of-way applications. Seconded by Ms. McCulloch. Motion carried unanimously.

B. Reciprocal Access Agreement Summary

Ms. Sexton said this is something we have inherited, it is an amendment and re-statement of an easement and there will be more to come between the state and Plum Creek Timber. These were signed by the Governor in 2003 – 2004 without going to the Land Board. They are old easements which were amended to increase the easement from a 40-foot right-of-way to a 60-foot right-of-way and instead of going through the Land Board, which they should have, they went directly to the Governor. We realized the error and have been working with Plum Creek Timber to rectify the issue. This particular easement is in the Swan and there will be others to come, there are other easements that had the old 40-foot right-of-way and need to be amended and re-stated. But Plum Creek has agreed to provide motorized public access across two of their sections which will provide access to approximately 3,500 acres of trust land for hunting and fishing. Plum Creek will apply the balance due, because this is a reciprocal access and we will be getting access as well, to the remaining easement we have available. These were set aside because they were amending old easements from the 40-foot right-of-way to a 60-foot right-of-way.

Motion was made by Ms. McCulloch to approve the reciprocal access agreement. Seconded by Mr. Johnson. Motion carried unanimously.

INFORMATIONAL ITEM

207-10 2007 LEGISLATIVE UPDATE : APPRAISALS/LAND BANKING/LAND EXCHANGE

Ms. Sexton said this informational item was requested at the last Land Board meeting. It is the bills that had to do with land appraisals and land banking and land exchanges. We have two bills listed here that are still alive, SB 8 which was introduced by Senator Shockley and deals with the ability of the Land

MINUTES
February 20, 2007
Page 21

Board to contract for a qualified appraiser and an independent attorney at the Board's wish and request. The contracted services could be used in the sale, transfer, or exchange of state land. That bill passed out of Senate Judiciary and has passed the Senate and been transferred to the House. There is a fiscal note attached. The other bill is SB 213 introduced by Senator Cobb which would establish a minimum bid amount based on the fair market value. This must be determined by a licensed appraiser. There were amendments added that the valuation of the trust land offered will not reflect a reduction in the value due to lack of legal access. It sets in statute the requirement that there be no reduction due to the lack of legal access. This has passed out of the Senate and gone to the House and there is no fiscal note attached.

Motion to adjourn was made by Mr. McGrath, seconded by Mr. Johnson.